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10/591,302	09/01/2006	Goran Sundholm	U 016470-7	9250

  

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LADAS & PARRY LLP 26 WEST 61ST STREET NEW YORK, NY 10023		

  

EXAMINER	
HARP, WILLIAM RAY	

  

ART UNIT	PAPER NUMBER
3651	

  

NOTIFICATION DATE	DELIVERY MODE
11/27/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

nyuspatactions@ladas.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/591,302	<b>Applicant(s)</b> SUNDHOLM, GORAN	
	<b>Examiner</b> William R. Harp	<b>Art Unit</b> 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 2, 2009 has been entered.

### ***Response to Amendment***

2. Examiner acknowledges the amendment to the claims entered November 2, 2009 in response to a Non-final Office Action mailed May 1, 2009.

3. Claims 1-4, 6-22 are pending. Claim(s) 5 is/are cancelled. Claim(s) 1, 13 is/are currently amended.

### ***Response to Arguments***

4. Applicant's arguments, see Pages 1-5 of applicant's remarks, filed November 2, 2009, with respect to the rejection(s) of claim(s) 1 and 13 under 35 U.S.C. 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of newly cited prior art.

### ***Claim Objections***

5. Claims 13-17 are objected to because of the following informalities: replace "means for bringing" with -- means for feeding --. Appropriate correction is required. Claim 13 has a means for feeding a second medium and a means for bringing a second medium. The claims should be amended to recite one or the other.

Art Unit: 3651

6. Claim 14 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The nozzle of claim 14 is recited in claim 13; therefore, claim 14 fails to further limit claim 13.

***Claim Rejections - 35 USC § 101***

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. Since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 1 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex*

Art Unit: 3651

*parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

11. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

12. Since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 23 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

### ***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

Art Unit: 3651

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

15. Claims 1-8 and 10-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tolman (USPN 1965866) in view of Neumann et al. (USPN 2852922).

16. Regarding Claims 1, 10, 11, 13, 14, Tolman teaches a method for conveying material by means of a pressure difference in a conveying pipe (18), in which method the material is fed to a conveying pipe (through aperture 20), and further in the conveying pipe to a separator device (10, 17) in which the transferred material is separated from conveying air, in which method underpressure is achieved to the conveying pipe with an ejector apparatus (46) the suction side of which is combined with the separator device (10, 17), which ejector apparatus is operated with a gaseous actuating medium (steam P2, L123-133). Tolman further teaches a second medium (water) sprayed through nozzles (51) for further cleaning of the air in chamber (10) [P2, L133-139]. Tolman fails to teach that the second medium is brought to the ejector apparatus.

Neumann et al. teaches an ejector (10) with a nozzle (14) feeding an actuating medium (pressurized gas). Neumann et al. further teaches at least one nozzle (30) for feeding a second medium [C2, L31, "liquid"] to the ejector. The second medium intensifies the suction effect of the ejector [C2, L31-37]. It would have been obvious to use a nozzle to feed a second medium to an ejector to intensify the suction effect as is known in the art.

17. Regarding Claims 2 and 15, the second medium is brought to the ejector regardless of the actuating medium. Neumann et al. fails to teach a motive device to force the second medium into the ejector; therefore, it is considered to be supplied with the actuating medium.

Art Unit: 3651

18. Regarding Claim 17 and 18, Neumann et al. teaches a pump device (ejector 10) which is operated by an actuating medium (as described above). Since there is not a separate pump for the second medium, the suction created by the ejector (which is operated by an actuating medium) draws the second medium into the ejector. The ejector is further considered a pump device.

19. Regarding Claim 21, Tolman teaches a means for separating (10).

20. Regarding Claim 22, Tolman teaches an outlet fitting (15).

21. Claims 3-8, 16, 17, 18, 19, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tolman in view of Neumann et al. as applied to claim 1 above, and further in view of European Document (EP 1179682 A2, hereafter '682).

22. Regarding Claims 3 and 16, Tolman in view of Neumann et al. teaches the limitations described above, yet fails to teach the second medium brought to the ejector regardless of the actuating medium. '682 teaches an ejector utilizing a second medium (Figure 4, Q3) and a means (10) for feeding the second medium. '682 further teaches that the second medium is a liquid [Para. 9]. Since the flow rate of the liquid Q3 can be set, then it is considered to be brought regardless of the actuating medium. It would have been obvious to bring the second medium to the ejector regardless of the actuating medium as is known in the art.

23. Regarding Claim 4, Tolman in view of Neumann et al. teaches the limitations above, yet fails to teach the proportion of the second medium and the actuating medium is regulated. '682 teaches that the flow rate of Q3 can be set optimally depending on the configuration of the ejector and/or the flow rate of Q2 [Para. 15]. It would have obvious to regulate the proportion of the mediums as taught by '682.

Art Unit: 3651

24. Regarding Claims 6, 7, 19, 20, Tolman in view of Neumann et al. teaches the limitations above, yet fails to teach the how the second medium is sprayed in relation to the ejector device. '682 teaches (Figures 2, 3, and 4) that the second medium can be injected at various locations as desired. It would have been obvious to specify the location of the second medium as required by the application.

25. Regarding Claim 8, Tolman teaches the limitations above, and further teaches an air washing chamber (10) that separates the sprayed water from the gas flow. Tolman fails to teach the second medium, however, Neumann et al. teaches the second medium as described above. It would have been obvious to separate the second medium from the gas flow in a manner similar to the separation of the water and gas flow as taught by Tolman.

26. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tolman in view of Neumann et al. as applied to claim 1 above, and further in view of Japanese Document (JP 9301504, hereafter '504, abstract provided by applicant).

27. Regarding Claim 9, Tolman in view of Neumann et al. teaches the limitations above. Neumann et al. et al. teaches the intensification of the suction effect by the second medium [C7, L50-C8, L3]. Tolman in view of Neumann et al. fails to teach odor elimination. '504 teaches supplying a deodorizing agent (abstract). It would have been obvious to use the second medium to eliminate odors in refuse conveying and to intensify the suction effect.

28. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tolman in view of Neumann et al. as applied to claim 1 above, and further in view of Talmor (USPN 4828768).



Art Unit: 3651

29. Regarding Claim 12, Tolman in view of Neumann et al. teaches the limitations described above, yet fails to teach a liquid bearing medium. Talmor teaches an ejector (10) with a liquid bearing medium as an actuating medium [Abstract, liquid droplets]

### ***Double Patenting***

30. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

31. Claims 1-4, 6-10, 12-14, and 21-22 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4-13, and 19-22 of copending Application No. 10591301. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed subject matter of the instant application is fully encompassed by the subject matter of copending Application No. 10591301.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Art Unit: 3651

***Conclusion***

32. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William R. Harp whose telephone number is (571) 270-5386.

The examiner can normally be reached on Monday - Thursday, 8:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gene Crawford/  
Supervisory Patent Examiner, Art Unit  
3651

/W. R. H./  
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